

**Testimony
of
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International President
American Federation of Musicians**

**Hearing
of the
HOUSE COMMITTEE ON SMALL BUSINESS
“Assessing the Impact of the Copyright Royalty Board
Decision to Increase Royalty Rates on
Recording Artists and Webcasters”**

June 28, 2007

Good morning, Chairwoman Velazquez and Members of the Committee. My name is Tom Lee. I am a professional musician and the International President of the American Federation of Musicians of the United States and Canada, AFL-CIO (“AFM”). On behalf of the AFM, I want to thank you for your attention and continued work on behalf of small businesses in the U.S.

I am particularly pleased to have the opportunity to speak with you today about musicians and singers. The AFM is very supportive of the webcasting industry, especially small and noncommercial webcasters that can add diversity to the music offerings made available to the public. But it is important to realize that small and noncommercial webcasters are not the only small businesses affected by the royalty rates set by the Copyright Royalty Board (“CRB”) last March. Most recording musicians and singers are themselves entrepreneurs and small business people who rely on many small income streams, including performance royalties, in order to survive. Any analysis of the

effect of the CRB decision on small businesses must take into account the need of performers, as small businesses, to be paid for their creative work.

I. Background and Qualifications

I am a keyboard player. I served for twenty-four years on active military duty as a pianist with the United States Marine Band, from 1966 until I retired in 1990. The Marine Band is also known as “The President’s Own” and has had a close association with the White House since 1801. I had the great pleasure and honor of playing the piano at the White House at least three days a week for receptions, state dinners and all manner of official functions during the terms of Presidents Johnson, Nixon, Ford, Carter, Reagan and George H.W. Bush. During my off-duty hours I also worked extensively as a free-lance pianist in the Washington, D.C. area.

I have been an elected officer of the AFM since 1991, and have served as its International President since 2001. Just last week, I was re-elected for a new three-year term. In my capacity as an AFM Executive Officer and most recently as AFM International President, I have participated in or led negotiations of numerous AFM industry-wide agreements, worked on legislative issues of importance to musicians, and gained familiarity with the issues that face professional musicians in these increasingly difficult times.

The AFM is an international labor organization with over 100,000 professional musician members in approximately 250 Locals throughout the United States and Canada. AFM members record music for sound recordings, film scores, radio, television and commercial announcements, as well as perform music of every genre in every sort of venue from small jazz clubs to symphony orchestra halls to Broadway and local theaters.

The AFM negotiates industry-wide agreements such as the Sound Recording Labor Agreement (“SRLA”), which sets standard working conditions for all musicians who record under it. All the major recording companies and hundreds of small and mid-size recording companies sign the SRLA. Our recording musician members include featured recording artists who are well-known celebrities, as well as non-featured artists who work as session musicians in the recording industry.

Although the traditional area of activity for labor organizations is collective bargaining, the AFM has long recognized the need to advocate for musicians’ interests in other ways as well. The AFM has been a strong proponent of copyright protection for U.S. performers since at least the 1970’s. The AFM and its sister union, the American Federation of Television and Radio Artists (“AFTRA”), were key advocates for the enactment of the Digital Performance Right in Sound Recordings Act in 1995 (the “DPRA”) and the Digital Millenium Copyright Act of 1998 (the “DMCA”). These two statutes together created the digital performance right in sound recordings and applied it to transmissions by webcasters and simulcasters.

In fact, the AFM and AFTRA were responsible for significant elements in the structure of the DPRA and DMCA. The unions made it clear in 1993 and 1994 – that is, early in the legislative initiative that led to the DPRA – that they would not support the legislation unless it ensured that performers would share directly in the benefit of the new digital performance right. The unions negotiated the current structure of the compulsory license for digital performances, pursuant to which 50% of the compulsory license revenue is allocated to performers (with 45% going to featured artists, and 5% going to non-featured musicians and singers), and 50% to sound recording copyright owners.

Later, the unions worked with other organizations like the Music Managers' Forum, the Recording Academy, the Recording Artists' Coalition and the Future of Music Coalition to ensure that the performers' share of digital performance right revenue would be paid to them directly, rather than through their record labels.

The digital performance right has worked in the way that the unions envisioned in the early 1990's. It has created a small but important new income stream for thousands of musicians who count on the accumulation of many such modest revenue streams in order to survive and continue to make music.

II. Recording Artists and Session Musicians Are Small Businesses

It is easy to think of recording performers as a small and select group of rich celebrities, who inhabit a glamorous world, and whose concerns have nothing in common with those of "ordinary" citizens. I wish music was all wealth and glamour, but it certainly is not.

Sure, some musicians become mega-stars and platinum-sellers. That's great, and I wish that kind of success were possible for every talented musician. But world-fame and vast fortune are very much the exception rather than the rule, even for the most talented and hardworking of musicians. I know from my own experience as a musician, and from over twenty years of services as an AFM International Officer and an officer of my home Local here in Washington, D.C., that all but a miniscule percentage of professional musicians earn only very modest sums from their creative work. The Bureau of Labor Statistics confirms my anecdotal knowledge: it reports that in 2004 (the most recent number available), the median hourly earnings of musicians and singers were \$17.85. No annual earnings figures are available, according to the Bureau, because, as it

reports, “it is extremely rare for musicians and singers to have guaranteed employment that exceeds 3 to 6 months.”¹

In fact, within the profession we consider a performer to be a great success if he or she can earn a living from music and ditch their “day job.” The names of most successful recording artists never become household words. Nevertheless, these artists succeed artistically – they record terrific performances. They succeed economically – which is to say, they make a living at music and don’t need a day job. And they have loyal fans who follow their careers avidly even if they aren’t regular front-page news. But they never become rich and they must work incredibly hard to combine incomes from live performances, recording sales, licensing sound recordings to television or movies, merchandising, songwriting, session recording, producing other artists, and any business opportunities they can muster, in order to earn a middle-class living and fund their recording and other artistic projects. I am honored to be on this panel before you today with exactly such an “ordinary” successful artist, AFM member Cathy Fink, a ten-time Grammy nominee and two-time Grammy winner for Best Musical Album for Children. Cathy can explain exactly what the working life of such “ordinary” recording artists is like.

There is another kind of recording artist whose names mostly remain unknown, but who are vital to the creative success of countless sound recordings. Session musicians and vocalists contribute critical interpretive elements – intros, fills, chord changes, solos, tempo and rhythms – that bring the notes and lyrics on a page to life in a unique recorded performance. The AFM is fortunate to have as its International Vice

¹ Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, 2006-2007 Edition, Musicians, Singers, and Related Workers, on the Internet at <http://www.bls.gov/oco/ocos095.htm> .

President Harold Ray Bradley, the most recorded guitarist in history, a Country Music Hall of Fame inductee, and one of the legendary Nashville “A” team session musicians. You may never have heard Harold’s name, but you’ve definitely heard him play bass on Patsy Cline’s recording of “Crazy,” Roy Orbison’s recordings of “Oh Pretty Woman” and “Crying,” Tammy Wynette’s recording of “Stand By Your Man,” Roger Miller’s recording of “King of the Road,” and numerous other hit recordings by Elvis Presley, Jimmy Dean, Loretta Lynn, Ray Anthony and others. Many other AFM members, past and present, also have illustrious careers making famous (and not-so-famous) recordings into wonderful works of art, without becoming known to the public outside of a few aficionados.

It is no exaggeration to say that the body of recorded works broadcast by internet radio and other music services includes wonderful performances by tens of thousands of session musicians and vocalists. I point especially to Harold Bradley, though, because Harold has done so much to explain the inner workings of a recording session from the point of view of the musicians. In testimony before the CRB, Harold explained how session players contribute to recordings, using the example of the session that recorded Patsy Cline’s “Crazy.” That recording became the number one jukebox hit of all time in part due to the “tic-tac” bass sound that Harold developed and played with the legendary Bob Moore, Floyd Cramer’s blues element on piano, Walter Haynes’ tremolo sound on the pedal steel, Buddy Harman’s percussion, and the inimitable background vocals of the Jordanares. With your permission, I have attached Harold Bradley’s testimony before the CRB so that you can read his own words about his experiences. (Appendix A)

As the AFM's President, I am extremely proud of all our union has done to improve the economic life of session musicians and recording artists. Recordings made under the AFM's SRLA result in three distinct forms of compensation to the musicians. They are paid for their time in the studio, including the current minimum scale payment of \$361.72 for a three-hour session to record 15 minutes of music, plus a 10% pension contribution and a health & welfare payment of \$19.00. In addition, musicians share in the sales revenue generated by SRLA recordings through a negotiated fund called the Special Payments Fund ("SPF"). Signatory employers contribute to the SPF in accordance with a negotiated formula based on sales, and the SPF conducts an annual distribution of those sums as deferred wages to musicians who have worked under the SRLA during the preceding five years. Finally, musicians receive additional payments, called "new use" payments, if their recordings are used in new media such as motion pictures. But as good as this compensation system is, it does not result in riches – only in a relatively modest middle-class income for musicians who work under it regularly.

And it must be remembered that practically no session musician actually has a regular "job" from which he or she can count on receiving an annual income. Session work, like most musician employment, is intermittent even in the best of times. When hard times hit the recording industry, as they have for the past several years, the amount of union recording decreases, and total scale wage and pension earnings decrease simply because there are fewer sessions. Similarly, reduced industry sales drive down SPF income, which has declined overall since 2001. And although the AFM has negotiated special low-budget recording rates for projects that cannot afford full union scale, there are always non-union recording dates for which musicians – often aspiring young

performers – do not receive anything like a union rate, pension contribution, or SPF payment. The Bureau of Labor Statistics noted in particular that due to the intermittent employment in the music industry, few musicians and vocalists have the kind of benefits other Americans take for granted, like unemployment compensation, paid vacations and sick leave.

As a result, session musicians and vocalists, like recording artists, must operate like entrepreneurs and make their living by combining many different income streams. They will work as many sessions as they can. They count on their SPF distribution payments. They also seek out live performance opportunities, either at home or on tour. Many of them, especially in Nashville, write songs and earn some income that way. They produce recordings, start their own small labels, and create business opportunities for themselves however they can.

Whatever types of music they play, whatever their level of fame, and whatever audiences they try to cultivate, my experience is that recording musicians of all types have the following important things in common.

First -- They have tremendous talent. They take a song – whether their own or someone else's – and transform it from notes on paper into a new, unique, living and breathing work of art.

Second -- They are incredibly hardworking. It would be great if a little talent – or a lot – were enough, but it isn't. Musicians and vocalists labor long and hard to develop their musical skills and their business opportunities. As the Bureau of Labor Statistics has said, "Musicians need extensive and prolonged training and practice to acquire the necessary skills, knowledge, and ability to interpret music at a professional level."

Third -- They may do it for love, but they also have to eat. Sometimes they have children, and those children have to eat, too. And although some of the younger performers may not believe it yet, some day they will want to retire – or their health may force them to.

III. Conclusion

One of the most disturbing things I read in the Bureau of Labor Statistics report is the following statement: “Talent alone is no guarantee of success: many people start out to become musicians or singers but leave the profession because they find the work difficult, the discipline demanding, and the long periods of intermittent unemployment unendurable.”

That statement is disturbing to me because I know it is all too true. Many talented musicians do, in fact, find the life unendurable. They start out full of hope, and many are willing to go hungry, or even to pay for the privilege of being heard. But in the long run that is too hard a way to live, and they are forced to give up. When they stop making music, we are all poorer. Professional musicians – the ones who survive in the business – know just how dangerous it is to believe that all music should be available for free, or practically for free. In the long run, there must be compensation systems in place that are sufficient to support musicians, if we really want to foster music in our culture.

The reason the AFM was such a strong supporter of the digital performance right fifteen-odd years ago was because we believe that performers should benefit *whenever* others make use of their work to build their own businesses. That is why we worked to ensure that the new law would require performers to get 50% of the revenue stream generated by the new compulsory license. That revenue stream is important to

musicians, and becomes more and more important as the way in which fans enjoy music shifts from purchasing CDs to listening to recordings on all the new and exciting music services. Everyone knows that CD sales have decreased, but few people realize that not only recording companies are hurt. Musicians are hurt, too, when session work decreases and when SPF distributions musicians decrease as sales decrease. Every source of income matters to musicians; the digital performance royalties are a new but increasingly important part of recording musicians' economic picture.

That does not mean that we do not support the truly small and noncommercial webcasters, to the extent that they are attempting to bring greater diversity to consumers, and to provide new outlets for terrific musicians who are outside of the mainstream. The AFM supports SoundExchange's efforts to reach an appropriate business accommodation with such services that will allow them to develop working business models while still making payments to performers.

But I think all of the publicity that has surrounded the issue of the CRB decision has completely missed a critical truth: that the forgotten small businesses that are most affected by the CRB rates are the thousands of recording artists, session musicians and background vocalists that are struggling to make a living. Their needs should not be forgotten, because if the difficulties they face make life as a creator unendurable, there won't be any music for the new music services to bring to the public, or to build their own small businesses around.

Thank you.

APPENDIX A:

American Federation of Musicians International Vice President Harold Bradley's
testimony before the Copyright Royalty Board

October, 2005

Before the
COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, D.C.

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In the Matter of 1
DIGITAL PERFORMANCE RIGHT IN
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1 Docket No. 2005-1 CRB DTRA
SOUND RECORDINGS AND EPHEMERAL 1
RECORDINGS 1

TESTIMONY OF

HAROLD RAY BRADLEY

Vice President of the American Federation
of Musicians of the United States and Canada

October 2005

I. Introduction

My name is Harold Ray Bradley. I am the Vice President of the American Federation of Musicians of the United States and Canada, a labor organization that represents over 100,000 professional musicians who work as featured recording artists, non-featured session musicians in the recording industry, and live performers in every sort of venue from symphonic orchestras to theaters around the country to hotel lounges, nightclubs and private parties. For the past fifteen years I have also been the President of the Nashville Association of Musicians, Local 257 of the AFM. I am a member of the Board of Governors of the National Academy of Recording Arts and Sciences, and I was the first President of NARAS's Nashville Chapter.

I am very pleased and honored to appear here today before the Copyright Royalty Judges to talk to you about the creative process in making hit records. I will begin by describing my own background and experience in the music industry. I will then describe in some detail how musicians make unique creative contributions in the recording studio. Finally, I will describe how musicians are compensated for their efforts, and explain why the income from the compulsory license at issue in this case will be so important to musicians.

II. Background and Experience

I am, first and foremost, a recording musician with over fifty-eight years of experience in the industry. I have been blessed with a long and successful career as a studio musician, and I still occasionally perform in recording sessions. Some people say that I am the most recorded guitar player in history, and that may well be true because I have been an active studio musician since 1946. I have recorded all kinds of music -country, rock and roll, jazz, gospel and pop. I have been privileged to record with some of the best names in the music business, including -in no particular order -Patsy Cline, Willie Nelson, Roy Orbison, Elvis Presley, Joan Baez, Buddy Holly, Hank Williams, Henry Mancini, Connie Francis, Leon Russell, the Everly Brothers, Perry

Como, Ivory Joe Hunter, Pee Wee King, Alan Jackson, Conway Twitty and many others.

You may never have heard my name, but you are likely to have heard my music on a hit recording such as Patsy Cline's recording of "Crazy," Roy Orbison's recording of "Crying," Tammy Wynette's recording of "Stand By Your Man," Jimmy Dean's recording of "Big Bad John," Loretta Lynn's recording of "Coal Miner's Daughter," Brenda Lee's recording of "I'm Sorry," Roger Miller's recording of "King of the Road," Jeannie C. Riley's recording of "Harper Valley

* PTA," or Ray Anthony's recordings of "The Bunny Hop" and "Hokey Pokey," to name some examples. I am proud to say that my work as a session musician has been honored by the industry. I received the NARAS "Superpicker" Award from 1974 through 1979. I am one of twelve musicians honored at RCA's Studio B in Nashville, now a museum operated by the Country Music Foundation. In 1999, I was inducted into the North America Country Music Association, International Hall of Fame.

I have also performed on numerous motion picture soundtracks. Some of these include "Kissin' Cousins," "Clambake," "Stay Away, Joe," "Fastest Guitar Alive," "Sugarland Express," "A Walk in the Spring Rain," "Tick, Tick, Tick," "Breathless," "Smokey & the Bandit 11," "Coal Miner's Daughter," "Six-Pack," "Missing," and "Sweet Dreams." I also appeared briefly in Robert Altman's award-winning movie, "Nashville."

I have played other roles in the music industry as well. Before I graduated from high school I was traveling and performing live in Ernest Tubb's band. In 1955, my brother, Owen Bradley, and I opened the first recording studio on what later became Music Row in Nashville. Owen and I also co-produced 39 television variety shows titled "Country Style USA." In the mid- 1960's, I recorded three albums of my own as a featured artist under contract with Columbia Records. And I have represented or produced other i artists, including Byron and Slim Whitman, Billy Chinnoek, Eddy Arnold and,

most recently, Mandy Barnett. My biography is attached as Exhibit 242 DP. I know from my own experience that it takes many kinds of contributions _ to make a sound recording. The creative inspiration of the songwriter forms a beginning. But, as I hope to show you in more detail, the recording as an artistic product does not exist until after that first song idea has been brought to life by the creative contributions, skill and hard work of musicians, singers, producers, engineers and others. In this proceeding, you will hear evidence from the record companies that explains the varied roles they play in the creation of sound recordings. I intend to explain to you the roles played by the musicians who perform the music.

III. The Creative Contributions of Musicians in the Recording Studio

"It all starts with a song" -I often quote those words of Maggie Cavender, a great songwriter and songwriter advocate, who founded the Nashville Songwriters Association. But, as true as Maggie's words are, I always must add to them, "But it doesn't end there."

Even before the first regular recording session, the song must be given some musical life. Usually that is a performance on a demonstration record - called a demo -although sometimes it simply may be a musician coming to the recording session or to a home recording studio and playing the song on a guitar or piano. That first demo often will suggest a style, and good ideas in the demo may well be adopted in the final recording. But the song is not fully realized until the performance in the recording session, and it may be completely transformed in that artistic process.

A good example of this is Willie Nelson's demo of his song, "Crazy," and Patsy Cline's timeless recording of "Crazy." My brother Owen was the producer for Patsy Cline's recording. I was one of seven studio musicians called for the recording session. At the session we listened to the demo. To tell the truth, everyone on the demo was playing the wrong chords, and it didn't really sound like much. Right at the recording session, Owen -with the help of us musicians -developed the perfect musical arrangement for "Crazy." That

recording went on to become both a country and pop hit, and, in 1997, it was honored by the Amusement and Music Operators Association as the #1 jukebox hit of all time. You can see how the recording session transformed the song by listening to Exhibit 505 DP, a CD that contains both the Willie Nelson demo and the final Patsy Cline recording of "Crazy."

It is in the regular recording session that a song is transformed into a recorded performance -an artistic work with its own style, personality, artistry and voice. And that transformation comes about through the musical skill and the creative inspiration and talent of the performing artists assembled, including the session musicians, the background vocalists, the featured performer and the producer and recording technicians.

I've known musicians to suggest changes to lyrics, and I certainly have known producers such as Chet Atkins and my brother Owen to urge and obtain changes in lyrics, and then put their chords to the song during the recording session. But more importantly than any one word or note, the musicians in the recording session "style" the song with intros, fills, chord changes, solos, tempo and rhythms. There cannot be any doubt that the same underlying song can give rise to radically different recordings when the performance is given in a country style, or a pop style, or a rock and roll style.

More subtle changes can transform a song too. I remember performing on Ray Price's recording of the Kris Kristofferson song, "Help Me Make It Through the Night." Ray Price recorded a lot of Kris Kristofferson material, and he recorded this particular song in a Frank Sinatra, two-beat style. As popular as Ray Price was, this particular recording was not a hit. Then Sammi Smith recorded the song in 1970. Her recording reached #1 on the country charts and #8 on the pop charts. It made her a star and won her a Grammy and a gold record. I remember listening to Sammi Smith's recording to see what we had done wrong. Of course, there was her seductive voice. But I can't help thinking that part of the success of her recording was in the musicians' slowing the song down, and putting it in a straight 8th~rhythm so she could put a lot of feeling

into the lyrics. Exhibit 506 DP is a CD containing both the Ray Price and the Sammi Smith versions of "Help Me Make It Through the Night."

Of course, these creative choices can come from the featured artist, and they can come from a good producer like my brother, who was one of the best. But people often do not realize the extent to which they come from studio musicians in the recording session. As I will explain in more detail below, they often record without ever seeing any written music or arrangements. They listen to a demo, and then create the music behind the featured artist. They are, of course, expected to enhance the featured artist's performance. But they are also expected to create a sound and style. And it is the synergy and energy between the featured artist and the studio musicians, and between the studio musicians themselves, that can make a recording truly great.

I can give you an example from my own recording experience. In Nashville in the 1950's, we often used to record with one electric guitar and one rhythm guitar. When we added a second rhythm guitar, one would tend to cancel the other out. The Nashville musicians created a new tuning on the rhythm guitar called a Hi-Third, or Nashville tuning. Around 1958, a new instrument was invented called a G-string bass guitar, later called the "tic tac bass." I developed a new technique for this instrument. I put my hand over the bridge, which had the result of muting the strings while letting a "click" come through. Using that technique, we were able to play more notes and record with more intensity.

I used this technique on my Danelectro electric 6-string bass guitar while recording with Patsy Cline. One song I used it on was "Crazy," which I have discussed already. I also used it on "She's Got You" and "Walking After Midnight" and nine other songs that, together with "Crazy," were re-released in 1988 as "Patsy Cline: 12 Greatest Hits." That album remained on the Billboard Top Country Catalog Album chart for over thirteen years. It has been certified as 9 times platinum by the RIAA, as you can see from Exhibit 243 DP.

Bob Moore is a great and legendary bass player. He played acoustic bass on these Patsy Cline recordings, and, as I said, I played electric G-string bass guitar. Our work together on these songs has been described as "some kind of apex" of country bass. Bass Player magazine ranked "Patsy Cline: 12 Greatest Hits" as one of the "30 Essential Bass Albums You Must Own," and described the effect of our "tic-tac" sound like this:

Moore's stately lines and buoyant rhythms form, on their own, a near-complete study in tasteful country cornping. But once Harold started doubling 'em with his Dano, the whole rhythm section achieved an airy lift and a delicate sense of motion few bands have matched since. From the rolling click of "Walkin' After Midnight" to the sweet and relaxed bounce of "She's Got You" to Harold's elemental embellishments of Moore's line on "Crazy," this dynamic duo wrote the book that's still required reading for all Opryland wannabes.

The full article is included as Exhibit 244 DP.

Believe me, I don't speak to you of my own playing and Bob Moore's great bass playing out of vanity. And I certainly never could and never would try to suggest that Patsy Cline's great success was not due to her great voice, soul and artistry. But the double bass combination that we developed was also an important contribution, and my brother Owen used it in recordings until he died in 1998. I think it is important to shed light on the importance and value of the creative as well as the technical contributions of session musicians.

The extent to which a sound recording is a unique product of many talents and contributors simply cannot be overstated. To return for a moment to "Crazy," Willie Nelson wrote it and indeed it was a terrific song. But it has been said that his original conception was to write it as a narration. The tremendously successful recording of "Crazy" had an entirely different conception. Owen and Patsy Cline turned it into a classic ballad. And the

session musicians created a unique accompaniment that was perfect for the song. Back in 1990, the Nashville Monitor printed a story on the recording session for "Crazy" that gives a good description of how the session musicians contributed to make an artistically pleasing and commercially successful record. That article, which is Exhibit 245 DP, describes the "tic tac" sound I have already discussed. It also describes how Walter Haynes, who played pedal steel, added a tremolo sound that was "ethereal, hanging over the song like little halos of sound," how Owen added a similar texture on the organ, and how Floyd Cramer added a blues element on the piano.

Of course, "Crazy" is only one example. I can think of many more examples of the creative contributions of studio musicians that enhanced the total artistic quality of a sound recording -that helped make it unique. The 1950's Red Foley's recording of "Chattanooga Shoe Shine Boy" was a great hit. It included the sound of a shoe shine boy's rag popping -in reality, the sound of the drummer, Farris Coursey, slapping his thigh. In Jirnrnie Dean's "Big Bad John," Floyd Cramer, a top session pianist and a country star in his own right, added a hammer to create the sound of a coal miner's pick. I played the tire chains on Freddie Hart's "The Chain Gang." There can be magic in the recording studio. Of course, it isn't really magic. It is the product of the readiness, talent and hard work of all of the artists involved.

In fact, I must, at this point, highlight the "hard work aspect of the musicians' creativity in the music business. People outside of the recording business may be quite unaware of the high level of special skills that studio musicians bring to a recording session. A studio musician is expected to arrive at a session without ever having seen, much less rehearsed, the music he or she will perform -and then to perform it flawlessly on the first take. For example, the other musicians and I walked in "cold turkey" to a recording session with Henry Mancini. He put up the charts, and we performed. When we recorded "Crazy" with Patsy Cline, there were no charts. As I said, we listened to the demo, and that was all the preparation we had. In both these

situations, we were expected to perform the music perfectly on the first take and every take in a three-hour recording session, because time is money in the studio. These examples are typical situations, not unusual ones.

A person can be a fine musician, but not have the special skills it takes to succeed in a recording studio. Somebody asked Chet Atkins if he could read music. He said, "Not enough to hurt my playing!" It requires discipline and hard work as well as taste to be a successful recording musician. Back porch pickers seem to fit into Nashville recording sessions better than classical or jazz players. For years, I drove only Chevrolets, because they had the biggest trunks of all. I needed a big trunk, because I drove to session after session carrying my bass guitar, my Martin guitar, my high third guitar, my classical guitar (we call them "gut string" guitars in Nashville), my banjo, my mandolin, my ukulele and two electric guitars -not to mention an amplifier. I had to be ready for anything.

IV. How Musicians are Compensated

I have described for you some of my history as a creative artist. Now I would like to describe how the compensation system works for musicians in the recording industry. For many years, the AFM has negotiated a collective bargaining agreement with all of the major record companies. Hundreds of mid-size and smaller companies sign that agreement as well. The current agreement, called the Sound Recording Labor Agreement ("SRLA"), was extended for one year and covers the period from February 1, 2002 through January 31, 2006. Negotiations for its successor agreement are scheduled for early November 2005. The SFUA sets standard working conditions that apply to all musicians -featured and non-featured -who record under it. And, it establishes a compensation system that, although it applies to all musicians, is of the highest importance for studio musicians who do not also have royalty agreements with the record company. The SRLA, and the Digital Distribution Memorandum of Agreement which, among other things, extended the SRLA until January 31, 2006, are attached as Exhibit 246 DP.

The compensation system that has developed in the SLRA has three

distinct facets. The first is "scale" -the wages and benefits paid for time spent in the recording studio. The second is the "Special Payments Fund" -a system of delayed compensation for recording musicians based on record sales. The third is "new use" -a system of compensation for the use of a recording in a new medium. I will explain each of them briefly.

Scale Wages and Benefits. The SLRA limits a master recording session to three hours, during which no more than fifteen minutes of music is recorded. Longer sessions require overtime, and premium payments are required for sessions held on designated holidays. The current scale for a regular recording session is \$345.98. On every regular session, the musician receives a \$19.00 health and welfare payment, made directly to that musician's Local Union health and welfare plan if there is one, or, if not, directly to the musician. And, of prime importance, on each recording session the signatory company makes a contribution of 10% of scale wages on each participating musician's behalf to the American Federation of Musicians and Employers Pension Fund.

Musicians like me, who have spent many years working in union recording sessions, have accumulated meaningful pensions from the AFMEP Fund. The SRLA contains many special provisions, including the possibility of lower scale payments for low-budget projects. The low budget provisions are an important innovation, through which we aim to expand the benefits of union recording -in particular pension benefits -to musicians working on smaller projects.

Special Payments Fund. In addition to scale wages, recording musicians receive a delayed compensation through which they benefit from the success of record sales. This is not a royalty payment, but it is an integral part of the compensation system negotiated by the AFM and the industry. It works in the following way.

Each record company that signs the SRLA also must sign the Sound Recording Special Payments Fund Agreement. It thereby undertakes the

obligation to make payments to the Fund based on a formula tied to its CD sales. The company reports 100% of its sales, and then, under the formula, receives various allowances. For example, the company is not required to make Fund payments on the first 25,000 units sold, or on certain record club sales and the like. Once the allowances are calculated, the recording company makes contributions to the Fund on the remaining sales. Those contributions are also based on a formula, and will be between .522% and .54% of the manufacturer's suggested retail price up to a stated maximum.

In 2004, the AFM negotiated a groundbreaking Digital Distribution Memorandum of Agreement that ensured that recordings sold via permanent digital downloads also would generate Fund contributions. The formula for those contributions was adjusted to reflect the realities of the digital market. Signatory companies do not have to make contributions on the first 10,000 downloads of a recording. Thereafter, the record company must contribute a sum equal to 1/3 of 1% of the wholesale price of the download (without deductions) for each download in 2004, and 1/2 of 1% of the wholesale price of the download (without deductions) for each download in 2005.

Each year, the Fund distributes the musicians' share of the Fund to musicians -whether or not union members -who have worked on recording projects under the SRLA during the last five years. These payments are a form of wages, so the Fund makes all the social security tax, unemployment insurance and worker's compensation premium payments required by state or federal law. It also, of course, pays its own operational costs. All the remaining funds accumulated annually are paid to musicians. It is a peculiarity of the Fund that a musician does not receive payments tied to the particular success (or lack of it) of his or her own recordings. Rather, the benefits of the Fund are spread out among all musicians who have been active in the industry within the past five years, in accordance with a negotiated formula.

I cannot overstate the importance of the Special Payments Fund. Fund

payments form a significant part of the income of an active recording musician. If overall sales diminish, so do contributions to the Fund, and therefore so does the income of recording musicians.

New Use. The SLRA also provides a mechanism designed to compensate recording musicians when a recording made under the Agreement is exploited in a different medium, such as a movie sound track or a television commercial. In order to make such a use, a company must notify the AFM, and make all the payments to the recording musicians that would be required under the collective bargaining agreement that would govern if the music were recorded again for the new use. For example, the recording session for "Crazy" took place under the predecessor to the SRLA, the Phonograph Record Labor Agreement, in 1961. In 1991, that recording was used on the soundtrack of the movie "Doc Hollywood," and in 1994 it was used on the soundtrack of the movie "Nell." For each of those two new uses, the AFM collected a new use fee and distributed it to the musicians who performed in the 1961 "Crazy" recording session. In essence, we got paid in 1991, and again in 1994, as if we had performed in a new recording session under the Theatrical and Motion Picture Agreement, which is the collective bargaining agreement that applies to musicians in the motion picture industry.

V. The Importance of the Compulsory Licenses to Musicians

As you can see, the payment structure on union recordings is composed of several pieces. It is designed to compensate musicians for the time they spend in the studio, and to also share with them to some extent the profits from CD sales, and finally to compensate them when their work is exploited in a new medium.

What has historically been missing from this structure is, of course, any compensation for the broadcast of sound recordings over the radio. Because historically there was no performance right in sound recordings, the broadcast industry was able to use our creative product without any compensation to us. Every time "Crazy" was broadcast over the radio, Willie Nelson received a

songwriter's royalty. But Patsy Cline got nothing, and neither did Decca Records, or my brother Owen, or Bob Moore, or Floyd Cramer, or Walter Haynes or Buddy Hannan or the other studio musicians whose combined magic made that recording.

The AFM always viewed that state of affairs as a great injustice, and was active in every effort over the years to persuade Congress to amend the Copyright Act to include a performance right in sound recordings.

A. The AFM's Critical Role in Obtaining a Digital Performance Right That Compensates Musicians

In the face of the dawn of the digital age, the AFM, like the record industry, invested enormous energy into the effort that finally led to the passage of the Digital Performance Rights in Sound Recordings Act of 1995. Our International President and the president of our internal union conference of recording musicians, the Recording Musicians Association, testified before Congress. I came to Washington along with other recording musicians to meet with individual Congressmen about the importance of the Act. Although the union and its recording company employers don't always agree, in this effort we worked together. It was crucial to the well-being of recording artists, and the survival of their art, that they be compensated for the exploitation of their work in the new digital media, especially since the new media were likely to reduce the sales upon which so much of their income depends.

Thus, a condition of the AFM's support of the Act was that the income streams generated by this new right be shared with performing artists. And indeed, as you know, that is the structure of the Act as it was passed. Of particular relevance to this proceeding, the Act requires that 45% of the proceeds from the compulsory license be allocated to featured performing artists, that 2 % shall be allocated to non-featured musicians and that 2 L/2 % shall be allocated to non-featured vocalists.

B. The Importance of the Digital Performance Compulsory

License to Royalty Artists and Session Musicians

I think that a few comparisons will demonstrate for you how important this new income stream will be to working musicians. As I have said, I was blessed with a very successful music career, and I am proud and grateful to have benefited from decent union conditions, scale wages, Special Payment Fund payments that were considerable in the heyday of my career, and especially, now, a meaningful pension. But as I look back at my old records, I see that for the recording session that created "Crazy" I received scale wages of \$89.16, based on the then-current negotiated scales. Exhibit 247 DP is a copy of my calendar for the week of August 21, 1961, which shows the "Crazy" session on that date and notes my wages and withholding for the session. The pension plan was relatively new at that time, and I believe that the pension contribution made on my behalf would have been 5.5 % of my scale wages for the session. The Special Payments Fund was not created until 1964, so I would not have received that form of compensation in 1961. Of course, the success of "Crazy" and the later sales of "Greatest Hits" album ultimately resulted in increases in the Fund that benefited all recording musicians, including me. But I think it is interesting to realize how modest this compensation is in relation to the extraordinary success of the single "Crazy" track -the #1 jukebox hit -not to mention the success of the "Greatest Hits" album on which it was later re-released.

Not only are the traditional forms of compensation for musicians very modest in relation to their great talent and level of skill and creativity, but even those modest forms of compensation are threatened in the new digital age. Musicians in my own home town and home Local of Nashville have suffered as a result of the retrenchment of the recording industry in the wake of reduced CD sales. In 1999, the total SRLA scale wages paid to musicians in Nashville topped \$15.5 million. Those wages also generated pension contributions and resulted in Fund payments. In 2003 and 2004, Nashville SRLA scale wages amounted to only \$12 million annually, and we desperately hope that this represents a leveling-off and that there will not be further declines. The loss of \$3 million in annual wages, and the attendant loss in pension contributions

and lowered Fund payments, is a huge misfortune for us, and, we think, for everyone. It not only means that there was less work and reduced living standards for our brother and sister musicians, but also that there was less music and less art in Nashville, which hurts the whole country. We believe that the decline in sales is caused in large measure by unauthorized file-sharing and the insidious notion that our work and art should be free for the taking. We know that the downturn in the industry has resulted in record company mergers that lead to reduced artist rosters and fewer of the recording sessions that form our life's work and put bread on our tables.

Along with reduced wages, recent years have brought us reduced Fund payments as the recording company contributions to the Fund, which are based on their sales, have declined. Pre-audit contributions made by signatory recording companies to the Fund in 2001 totaled \$18,377,532. They were down to \$16,548,558 in 2002 and to \$12,805,481 in 2003. Although pre-audit i contributions increased in 2004 to \$15,779,996 -which is consistent with the generally-reported recovery in the industry in that year -they certainly did not increase to 2001 levels. And, the recovery does not appear to have maintained -itself in 2005. I understand that Fund contributions for 2005 are running at lower levels than in 2004.

Now the new digital music services are poised to build businesses and make profits based upon the product created by our skills, talent and hard work. I hope that this Panel will establish a fair market rate of payment for the use of our creations -one that will not require musicians to subsidize these new businesses but instead will provide a meaningful income stream for musicians who work so hard. I hope this in particular for the benefit of other, younger artists than myself.

I urge you to set a fair license rate so that featured artists, who so often see little or no profit from their projects because their royalties go to recoup the costs of recording -will see a better return on their creative work, I mentioned at the outset that I recorded three of my own albums on Columbia Records. Those albums were artistically very satisfying. They certainly were a lot of work. I spent months -while still working practically daily as a studio musician -developing the material I recorded on those albums. They still have some success. But they did not sell enough copies for me to see any royalty returns on my record contract. This is a very typical reality for royalty artists in our hit-driven music industry. And the situation is even harder for the young artists today, whose careers are often so short.

But the potential to receive royalties for the continued use of our recordings on digital music services like the webcasts and simulcasts covered by this proceeding means that we can continue to receive some benefit when the world enjoys our work. Although I never received any royalty payments based on the sales of my three solo CDs, those CDs do get transmitted by digital services under the compulsory license, and I was incredibly pleased to learn that I will be eligible to receive a check from SoundExchange as a result. The same is true for many other young and old performers.

And I also urge you to set a fair license rate that will enable all the young and upcoming session musicians to receive fair compensation from the transmission of their work on the Internet. This will provide a valuable and much-deserved income stream for them. I have participated in union negotiations in this industry for the last fifteen years, and I am proud of all that the union has accomplished to improve wages, benefits and working conditions for recording musicians. But the union also fought for the new income stream made possible by the Digital Performance Rights in Sound Recordings Act and the Digital Millennium Copyright Act. Although that was a fight that occurred on Capitol Hill instead of across the bargaining table, it was

an important part of our representation of musicians. For musicians with the good fortune to be recording under AFM's SRLA, the compulsory license income will be a valuable addition to their income. It will be even more important to all the young musicians who are recording, sadly, without the benefit of union conditions, wages and pension.

Finally, I urge you to designate SoundExchange as the sole collective to receive the compulsory license fees paid by the senices. SoundExchange is a non-profit entity. It is experienced in collecting and distributing digital performance license fees to artists and copyright owners. And, most importantly, its governing board is composed equally of copyright owner and artist representatives, including the AFM. We believe that SoundExchange is the only appropriate agent to collect and distribute the royalties that are at issue in this proceeding.

I thank you very much for your kind attention.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Harold Ray Bradley

Exhibits Sponsored by Harold Ray Bradley

EX. NO. DESCRIPTION RESTRICTIONS

242 DP Biography of Harold Bradley None

243 DP Billboard chart dated April 26, 2003 with sales data for "Patsy Cline: 12 Greatest Hits"

None

Bass Player Magazine article, "30 Essential Bass Albums You Must Own"

None

Nashville Monitor article about the recording session for "Crazy"

None

Sound Recording Labor Agreement ("SRLA") and the Digital Distribution Memorandum of Agreement

None

Harold Bradley calendar for week of August 21, 1961

None

CD containing Willie Nelson's demo of "Crazy" and Patsy Cline's final recording of "Crazy"

None

CD containing Ray Price's version and Sammi Smith's version of "Help Me Make it Through the Night"

None